

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

30382

**FILE:** B-199104

**DATE:** February 6, 1985

**MATTER OF:** Emery J. Sedlock - Travel Expenses,  
Overtime Compensation, and Holiday  
Premium Pay

**DIGEST:**

Employee claims that agency's refusal to allow him to perform two temporary duty assignments constituted an unfair labor practice under 5 U.S.C. § 7116 (1982), and that he is entitled to the per diem, overtime compensation, and holiday premium pay he would have received had he performed the assignments. This Office may not consider allegations concerning unfair labor practices since the Federal Labor Relations Authority has exclusive jurisdiction to decide such complaints. In any event, the employee is not entitled to per diem since that allowance is authorized only if an employee actually performs official travel. Furthermore, the employee is not entitled to overtime and holiday premium pay absent evidence that he performed compensable work.

The Commander of the Navy Accounting and Finance Center, Department of the Navy, requests an advance decision concerning travel expenses and premium pay claimed by Mr. Emery J. Sedlock, a civilian employee of the Navy. Specifically, Mr. Sedlock claims that the Navy's refusal to allow him to perform two temporary duty assignments constituted an unfair labor practice under 5 U.S.C. § 7116 (1982), and that he is therefore entitled to the per diem, overtime compensation, and holiday premium pay he would have received had he performed the assignments. For the reasons stated below, we have no jurisdiction to consider Mr. Sedlock's charge that the Navy committed an unfair labor practice. Furthermore, we find no statutory basis for allowing the claimed payments.

**BACKGROUND**

The relevant circumstances insofar as can be determined from the record are as follows. Mr. Sedlock,

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a Supervisory Oceanographer stationed in Bay St. Louis, Mississippi, was scheduled to perform temporary duty aboard the USNS Bowditch between April 7 and November 5, 1981. The Navy canceled this assignment, and Mr. Sedlock again requested and was denied temporary duty aboard the USNS Bowditch for the period August 18 to December 22, 1982. Mr. Sedlock alleges that the Navy's refusal to allow him to perform the two temporary duty assignments was punitive and therefore constituted an unfair labor practice under 5 U.S.C. § 7116, governing labor-management relations in the Federal sector. Based on this contention, he claims per diem for the periods June 5 to December 20, 1981<sup>1/</sup>, and August 18 to December 22, 1982. Also, he requests premium pay for the overtime and holiday work he alleges he would have performed had he been assigned to temporary duty during the periods in question.

The agency questions whether Mr. Sedlock is entitled to per diem, noting that the Joint Travel Regulations, vol. 2, para. C4550, authorize the payment of per diem only if an employee actually performs official travel. Further, the Navy states that its regulations do not provide a basis for paying Mr. Sedlock's claim for overtime and holiday premium pay, because he did not actually perform overtime or holiday work during the relevant periods.

#### OPINION

The basis for Mr. Sedlock's claim for travel expenses, overtime compensation, and holiday premium pay is that the Navy committed an unfair labor practice by refusing to assign him temporary duty during the periods in question. This Office, however, does not have jurisdiction to inquire

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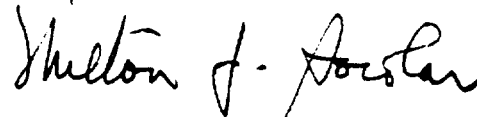
<sup>1/</sup> The record does not contain any explanation why Mr. Sedlock's claim relating to the first temporary duty assignment extends from June 5 to December 20, 1981, when the assignment actually was scheduled to begin on April 7 and end on November 5, 1981.

into allegations concerning unfair labor practices. Under the provisions of 5 U.S.C. § 7118 (1982), exclusive authority for investigating and deciding such complaints is vested in the Federal Labor Relations Authority.

In any event, we find no statutory basis for allowing the payments claimed by Mr. Sedlock. With respect to his claim for travel expenses, 5 U.S.C. § 5702 (1982) specifically provides that per diem is payable only to an employee, "traveling on official business away from his designated post of duty." Thus, the Government's obligation to pay per diem arises only if an employee actually performs official travel. See B-193091, November 1, 1978. Accordingly, since Mr. Sedlock did not perform temporary duty travel during the periods in question, he is not entitled to be paid per diem for those periods.

With respect to Mr. Sedlock's claim for premium pay, we note from the record before us that he is exempt from coverage under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. (1982), and, accordingly, his entitlement to overtime compensation is governed by 5 U.S.C. § 5542. Interpreting the provisions of section 5542, and absent any mandatory agency regulation or labor management agreement to the contrary, we have consistently held that an employee must actually work overtime hours in order to qualify for overtime compensation. See 55 Comp. Gen. 629 (1976); and B-191619, May 9, 1978. Similarly, 5 U.S.C. § 5546, which authorizes premium pay for an employee who, "performs work on a holiday," clearly contemplates the actual performance of holiday work. Since there is nothing in the record to indicate that Mr. Sedlock actually performed overtime or holiday work during the periods in question, we find no basis for allowing him the premium pay authorized by 5 U.S.C. §§ 5542 and 5546.

Accordingly, based on the present record, Mr. Sedlock's claim for temporary duty allowances and premium pay may not be allowed.

*for*   
Comptroller General  
of the United States